

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:SB:8:LN:GL-125768-00
NKHoang

date: JAN 16 2001

to: Territory Manager: Technical Support
Attn: Michelle S. Colbert, Advisor

from: Associate Area Counsel, Area 8, SBSE

subject: Whether taxpayers submitted a timely request for a collection due process hearing.

Taxpayers: [REDACTED]

(TIN [REDACTED], [REDACTED])

ISSUE

Whether [REDACTED] (the "Taxpayers") submitted a timely request for a collection due process hearing ("CDP Hearing").

CONCLUSION

The Taxpayers did not submit a timely request for a CDP Hearing.

FACTS

The facts recited herein have been provided by your office; we have made no independent investigation of their accuracy. If you become aware of any change in these facts, you should not rely on this advice and should seek additional assistance from our office.

The Taxpayers have 1040 liabilities for taxable years [REDACTED] and [REDACTED]. On [REDACTED], the revenue officer assigned to this case (the "Revenue Officer") submitted a Notice of Federal Tax Lien ("NFTL") to the county recorder's office. The NFTL listed the liability in the amount of \$[REDACTED]. Also, on [REDACTED], a Letter 3172, Due Process Notice for the Notice of Federal Tax Lien was sent to the Taxpayers and their representative who is an enrolled agent (the "Representative"). The Taxpayers and the Representative did not submit any request for a CDP Hearing to contest the NFTL on or prior to [REDACTED].

Subsequently, the Revenue Officer issued a Letter 1058, Final Notice of Intent to Levy and Notice of Your Right to a Hearing,

dated [REDACTED]. The Letter 1058 listed the following liabilities:

<u>Form No.</u>	<u>Tax Period</u>	<u>Unpaid Amount from Prior Notices</u>
1040	[REDACTED]	\$ [REDACTED]
1040	[REDACTED]	\$ [REDACTED]

The liability for tax year [REDACTED] increased by \$ [REDACTED] because the Taxpayers were charged for the lien filing fee.

Under the heading "Where to File Your Request," the Letter 1058 states the following: "It is important that you file your request using the address shown on your lien or levy notice. If you have been working with a specific IRS employee on your case, you should file the request with that employee." The name and telephone number of the Revenue Officer is listed on the Letter 1058. The Office of Appeals shares the same street address as the Revenue Officer's collection group; however, the collection group has a different post office box and room number. The collection group address, post office box, and room number are listed on the first page of the Letter 1058.

On [REDACTED], the Representative sent a cover letter and CDP Hearing request on Form 12153 directly to the Office of Appeals. On Form 12153, the Representative checked the box indicating that the Taxpayers did not agree with the filed NFTL. The Form 12153 did not have a check mark indicating disagreement with the Notice of Levy. The Office of Appeals received the cover letter and Form 12153 on [REDACTED]. On [REDACTED], the Revenue Officer served levies on [REDACTED] and [REDACTED]. The earliest date for compliance with the levies was [REDACTED]. The Office of Appeals forwarded the cover letter and Form 12153 to Technical Support on [REDACTED]. Technical Support received the forwarded package on [REDACTED]. On [REDACTED], which fell on [REDACTED], a federal holiday, the taxpayer's representative faxed a copy of the CDP Hearing request that had initially been sent to the Office of Appeals to the Revenue Officer's acting Group Manager.

ANALYSIS

Treasury Regulation §§ 301.6320-1T(c) and 301.6320-1T(c)(2)A-C3 specify that a taxpayer must submit a written request for a CDP Hearing within the 30-day period that commences the day after the end of the five business day period following the filing of the NFTL. Although there is no specific legal authority defining the term "filing," Chief Counsel takes the position that filing occurs on the date that the NFTL is submitted to the county recorder's office. Since the NFTL was submitted to the county recorder's

office on [REDACTED], the last day to submit a timely request to appeal the NFTL was [REDACTED]. The Taxpayers did not submit any request for a CDP Hearing under I.R.C. § 6320 on or before [REDACTED].

Subsequently, the Revenue Officer issued a Letter 1058, Final Notice of Intent to Levy and Notice of Your Right to a Hearing, dated [REDACTED].

A CDP Hearing request must be in writing and must list the taxpayer's name, address, and daytime telephone number. Treas. Reg. § 301.6330-1T(c)(2)A-C1; Treas. Reg. § 301.6330-1T(c)(2)A-C2; Johnson v. Commissioner, 1000 U.S. Dist. LEXIS 8320, 2000-2 U.S.T.C. 50,591 (D. Or. May 24, 2000). In addition the CDP Hearing request must be signed by the taxpayer or the taxpayer's authorized representative and dated. Treas. Reg. § 301.6330-1T(c)(2)A-C1.

Pursuant to Treasury Regulation subsection 301.6330-1T(c)(2)A-C3 ~~the request for a CDP Hearing to contest levy action must be~~ made within the 30-day period commencing the day after the date of the collection due process notice. Since the Letter 1058 was dated [REDACTED], the deadline for submitting a timely request for a CDP Hearing under I.R.C. § 6330 to contest levy action was [REDACTED].

Treasury Regulation section 301.6330-1T(c)(2) A-C6 specifies that "the written request for a CDP hearing should be filed with the IRS office that issued the CDP Notice at the address indicated on the CDP Notice. If the address of that office is not known, the request may be sent to the District Director serving the district of the taxpayer's residence or principal place of business. If the taxpayer does not have a residence or principal place of business in the United States, the request may be sent to the Director, Philadelphia Service Center."

In the case at hand, the request for a CDP Hearing was made in writing, and the writing did list the taxpayers' names, address, and daytime phone number. In addition, the Representative signed and dated the cover letter and Form 12153. However, on [REDACTED], the CDP Hearing request was not filed with the correct office. Although the Letter 1058 clearly stated that the request should be filed with the IRS office listed on the Letter 1058, the Representative instead sent the request to the Office of Appeals. The first page of the Letter 1058 lists the address, post office box, and room number for the collection group that issued the due process notice. In addition, the first page of the Letter 1058 also lists the name and phone number of the Revenue Officer. On [REDACTED], well after the deadline for submitting a timely request for a CDP Hearing under I.R.C. § 6330, the Representative

finally faxed a copy of the CDP Hearing request to the Revenue Officer's acting Group Manager. The Office of Appeals forwarded the CDP request to Technical Support, however, that package was received on [REDACTED], after the deadline for submitting a timely request for a CDP Hearing had passed. Since the CDP hearing request was not filed with the correct office on or before the deadline, it is untimely.

Treasury Regulation section 301.6330-1T(c)(2) A-C7 states the following:

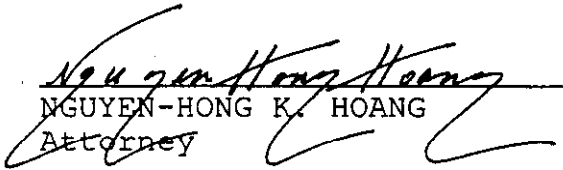
If the taxpayer does not request a CDP hearing with Appeals within the 30-day period commencing the day after the date of the CDP Notice, the taxpayer will forego the right to a CDP hearing under section 6330 with respect to the tax and tax period or periods shown on the CDP Notice. In addition, the IRS will be free to pursue collection action at the conclusion of the 30-day period following the date of the CDP Notice. The taxpayer may, however, request an equivalent hearing.

Chief Counsel takes the position that an untimely CDP hearing request should be acknowledged by the IRS office that issued the Letter 1058, and that the request should be treated by that office as a request for an equivalent hearing without the necessity for a separate written request. We recommend that the collection group send a letter to the Taxpayers informing them that an untimely request was received and they are not entitled to a CDP Hearing. The letter should also inform the Taxpayers that they are entitled to an equivalent hearing. Thereafter, the collection group should forward the case file to the Office of Appeals for the scheduling of an equivalent hearing.

If you have any further questions, please do not hesitate to contact attorney Nguyen-Hong Hoang at (949) 360-3465. We will be closing our case file.

Miriam A. Howe
Acting District Counsel

By:


NGUYEN-HONG K. HOANG
Attorney